conditions of payment are material terms. After all a considerable sum of money was involved in the transaction.

Mr. Nayar conceded that the only thing parties agreed was the price. He argued that other terms are still under negotiation. Defendants suggested the mode of payment to ensure that they were protected for short shipment unless plaintiffs could put up some sort of guarantee then they would agree to release full payment. But plaintiffs were not prepared to give such guarantee (Exh. 20). It was submitted that the whole correspondence must be looked at and not to part of it only.

I pause here to say that references were made to various sections particularly section 4 of the Sale of Goods Act, 1893. It has not been disputed that the said Act is of general application by virtue of section 2 of the Application of Laws Ordinance (Cap. 2). However section 4 of the said Act had been repealed by section 2 of the Law Reform (Enforcement of Contracts) Act, 1954. The latter Act is specified in the Schedule under section 3 of the said Ordinance to be in force as from 1st January 1955. Therefore references to section 4 and in fact to other sections of the Sale of Goods Act 1893 are not of much assistance in this case at this stage on the question as to whether or not there is a binding contract between the parties.

I think Mr. Nayar's submission that the Court must look at the whole correspondence between the parties is a correct statement of the law. This principle was laid down by the House of Lords in *Hussey* v. *Horne Payne.*[1] This was followed in *Bristol, Cardiff, and Swansea Aerated Bread Co.* v. *Maggs* [2] where plaintiffs prayed for an order of specific performance against defendant and relying on two letters, one written by defendant to plaintiffs offering to sell their business, and the other a reply from plaintiffs accepting the offer. Defendant's solicitors then sent plaintiffs a formal memorandum of agreement comprising several terms not expressed in the two letters. Plaintiffs' solicitors added a clause restricting defendant from carrying on a similar business within certain limits. A correspondence then followed between the two solicitors. Eventually defendant's solicitors withdrew the offer. In *Bristol's Case* [2] at page 622 Kay, J. referred to that part of Lord Cairn's judgment in *Hussey's Case* [1] which read:—

"It is one of the first principles applicable to a case of the kind, that where you have to find your contract, or your note or memorandum of the terms of the contract in letters, you must take into consideration the whole of the correspondence which has passed. You must not at one particular time draw a line and say, 'we will look at the letters up to this point and find in them a contract or not, but we will look at nothing beyond.' In order fairly to estimate what was arranged and agreed, if anything was agreed between the parties you must look at the whole of that which took place and passed between them."

It may well be that if you look at the five telegrams alone without any knowledge of the other facts of the case they might lead you to think that they amounted to a complete agreement. But there were other terms which at the time had not been agreed upon and efforts made to settle the terms were unsuccessful.

I agree with the view expressed in *May* v. *Thomson* [3] that *Hussey's Case* [1]

"shews that we must look at the correspondence from beginning to end. Of course if we find a few letters which are perfectly plain in themselves, which shew an agreement, and the parties do not follow them up by further correspondence, we have a comparatively easy case; but where each letter is followed immediately by another which suggests something else as a topic of further discussion, it becomes most dangerous to draw a line after any particular letter."

In *Bristol's Case* [2] plaintiffs' solicitors had themselves shown that the agreement was not complete by stipulating afterwards for an additional term thus keeping the whole matter in a state of negotiation. Whereas in this case plaintiffs wanted the contract to be in writing and omitted to insert in the contract an important term which was agreed previously. It was held in the former case that in such circumstances defendant was at liberty to withdraw his offer. That case also shows that the negotiation of an important term was enough to indicate that the contract was not complete. I hold in this case that plaintiffs by omitting an important term in their contract kept the whole matter in a state of negotiation only and that defendants were justified in the circumstances in withdrawing their offer.

For reasons given I therefore hold that there is no binding contract existing between the plaintiffs and the defendants. Accordingly plaintiffs' claim is dismissed with costs to be taxed. Judgment for defendants.

Claim dismissed.

LING KAI HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Lee Hun Hoe J.C.) September 8, 1964]

[Sibu — Criminal Appeal No. CA/4 of 1964]

Criminal Law — Offensive weapon — Offence of going armed with an offensive weapon — Mere possession of offensive weapon not an offence — Credibility of witness — Duty of Magistrate — Minor Offences Ordinance (Cap. 56), s. 31.

The appellant appealed against his conviction for an offence of going armed with an offensive weapons to wit a pen knife and metal pipe an offence under section 31 of the Minor Offences Ordinance.

Held: (1) the mere possession of an offensive weapon in a public place is not an offence; it can only become an offence when it is for otherwise than a lawful purpose;

(2) in this case the learned magistrate had failed to consider the defence evidence and therefore the conviction must be set aside.

Case referred to:—

(1) *Ee Choon Bok and others* v. *Public Prosecutor* [1951] M.L.J. 184.

MAGISTRATE'S CRIMINAL APPEAL.

C. T. Wong for the appellant.

Frederick Chai (Inspector) for the respondent.

Lee Hun Hoe J.C.: The appellant was charged and convicted by the District Court at Sibu for an offence under section 31 of the Minor Offences Ordinance (Cap. 56). He was convicted and sentenced to two months' imprisonment. He appealed against his conviction and sentence.

Section 31 of the said Ordinance apparently is meant to deal with a person who without permit or lawful authority goes armed with an offensive weapon. Certain classes of persons are exempted. An offensive weapon is defined in subsection (2) of section 31 of the said Ordinance as including any instrument which if used as a weapon of offence is likely to cause hurt.

Appellant, a painter, was found to have in his possession a scrapper, a pen-knife and some kind of metal pipe. The learned magistrate considered that the pen-knife and metal pipe were offensive weapons. But he was obviously of the opinion that the scrapper was a working tool and not an offensive weapon. I think he had in mind paragraph (c) of subsection (2) of section 31 of the said Ordinance which excludes any instrument carried by a person for the purposes of his trade or occupation and reasonably required for such purpose. Having decided that those instruments were offensive weapons he had to consider the further question whether or not appellant had lawful authority or he carried it for a lawful purpose or he had any reasonable excuse.

I do not think it is the intention of the legislature to make mere possession of an offensive weapon in a public place an offence. Possession in a public place can only become an offence when it is for otherwise than a lawful purpose. The prosecution conceded that such a pen-knife could be bought in the local shops. I do not think the law makes the possession of a pen-knife an offence *per se*. To hold otherwise would render liable to punishment most of the shopkeepers. No doubt a pen-knife or a metal pipe can be used as an offensive weapon, so, for that matter can a changkol and a bread knife, and a number of other agricultural and domestic implements. A certain degree of commonsense is necessary lest a law obviously enacted to deal with undesirable elements should become an oppression against the public generally.

I have perused the record and heard counsel for appellant and seen the alleged offensive weapons. In my view it is important in this case to consider all the evidence that appears in the record of this trial. The learned magistrate's judgment consists of only two short paragraphs which do not show what weight or value he had given to the evidence of appellant and of Yong Hieng Lee who corroborated appellant's story substantially. Yong Hieng Lee gave sworn evidence and his evidence was in no way shaken by cross-examination. It is important for an appellate court to know what view the learned magistrate took as regard the credibility of a particular witness. I agree with what Abbot J. said in *Ee Choon Bok and others* v. *Public Prosecutor* [1]:—

> "This court is of opinion that no finding of fact ought to be upset except where it is clearly shown that the finding is unreasonable. In cases where the credibility of a witness is concerned it is, I consider, sufficient for it to be recorded in the grounds of decision that the witness was believed; it could then be for the appellant to show that such belief or disbelief, as the case may be, was unreasonable.".

It is most important for this court to know what impression the learned magistrate had formed of a particular witness particularly when his evidence was not in any way shaken by cross-examination. Because if this evidence were to be believed there would be a reasonable doubt the benefit of which must be given to the appellant. To my mind after having read the record and without seeing and hearing the witnesses it is obviously a case where the evidence adduced by the defence would create a reasonable doubt.

In the circumstances I hold that the conviction should be set aside not so much that it was against the weight of the evidence but because the trial magistrate had failed to consider all the evidence that was before him particularly in the sense that he had failed to consider the defence evidence. Accordingly, I allow the appeal and quash the conviction and sentence.

Appeal allowed.

PUBLIC PROSECUTOR v. WONG SIK CHUNG & ORS.

[R.Cr.J. (Lee Hun Hoe J.C.) September 8, 1964]

[Sibu — Criminal Revision No. CR/2 of 1964]

Criminal Procedure — Trial — Justice should not only be done but should manifestly and undoubtedly be seen to be done — Accused induced to plead guilty.

Gaming — Accused of playing "pai kow" — Magistrate convicting accused after compromise — Whether proper.

The accused were charged with playing a prohibited game of "pai kow". It appeared that before the hearing the learned magistrate instructed the court clerk to tell the accused persons that if they pleaded guilty, the magistrate would impose a fine of $5 on each accused